



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: AUGUST 05, 2022

IN THE MATTER OF:

Appeal Board No. 622560

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective August 11, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 5, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed part time as a test and trace outreach worker by the employer non-profit organization for just over one year. In an e-mail dated June 29, 2021, the claimant informed the employer that she was starting nursing school beginning August 23, 2021, but would be available to work until August 21, 2021.

Sometime after the claimant sent this e-mail, she was present at a meeting at which her supervisor was asking if anyone was available to work at an employer event on August 21, 2021. The claimant offered to work, but was informed that she could not work after August 15, since the employer had hired her replacement, who was starting on August 16, 2021. The employer did not

schedule the claimant to work after August 15, 2021. The claimant was not paid for the period between August 15 and August 21.

OPINION: The credible evidence establishes that the claimant gave the employer notice of her intention to resign as of August 21, 2021 to attend nursing school. Without more, this evidence would establish that the claimant was separated under disqualifying circumstances, since quitting to attend school is considered a voluntary separation without good cause for unemployment insurance purposes.

However, the credible evidence further establishes that the employer informed the claimant she could not work during an event scheduled for August 21, and advising the claimant that she could not work after August 15, thereby accelerating the end of her employment. It is significant that the employer did not pay the claimant through August 21, although the claimant was willing to work through that period, and that the claimant did not consent to her separation date being changed from August 21 to August 15.

The Board has held that where, as here, an employer ended an employment relationship prior to the effective date of the claimant's resignation, the claimant's employment did not end voluntarily. See Appeal Board No. 562531, citing *Matter of Putterman*, 10 AD3d 753 (3rd Dept, 2004); *Matter of Lukaszewski*, 249 AD2d 861 (3rd Dept, 1998); and *Matter of Senator*, 76 AD2d 652 (3rd Dept, 1980).

Since the claimant was willing and prepared to work beyond August 15, and had informed the employer that she was available to work until August 21, her employment would have continued until that date had the employer not unilaterally decided that her employment would end as of August 15. Accordingly, we find that the claimant's separation from employment was not voluntary, and conclude that the initial determination disqualifying the claimant on that basis shall be overruled.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective August 11, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER